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FEB 4 1998

Ms. Cynthia L. Johnson
Director
Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
Washington, D.C. 20227

Dear Ms. Johnson:

The Department of Defense has reviewed the proposed rule for 31 CFR Part 208, Management of Federal Agency Disbursements, and our comments are enclosed. I understand that representatives from the Defense Finance and Accounting Service (DFAS) have been working closely with your office to ensure that our concerns are addressed. I also understand that DFAS representatives gave your office an advance copy of these comments.

I appreciate your cooperation and expect that our joint working relationship will continue to benefit both organizations. Should you have any questions, my staff contact is Mr. Michael Burke. He may be reached by e-mail at burkem@ousdc.osd.mil or by telephone at (703) 697-0716.

Sincerely,

Nelson Toye
Deputy Chief Financial Officer

Enclosure

EFT
#029

**DEPARTMENT OF DEFENSE
COMMENTS ON
PART 208 - MANAGEMENT OF FEDERAL AGENCY DISBURSEMENTS**

Section by Section Analysis

208.1 Scope and application.

No comment.

208.2 Definitions.

(a) The definition of "agency" should include nonappropriated fund instrumentalities.

A definition of the term "financial agent" is needed and should reference the regulation in 31 CFR 207 (i.e., the proposed regulation published in 62 FR 25572, May 9, 1997, entitled "Selection and Designation of Financial Institutions as Financial Agents.") These two regulations should link so that the Electronic Transfer Account requirements are in both regulations.

(b) "Authorized payment agent also links to section 208.6 "Account requirements." Concerns over the protection of the recipient's interests and the potential adverse consequences of making payments to a third party's bank account are commendable and are shared by the Department of Defense (DoD). It seems, however, that the draft regulation confuses the concept of payee (recipient of the payment) with the method of payment. (Paying a guardian or trustee of an incapacitated recipient does not necessarily constitute payment by EFT--the guardian or trustee still can apply for a waiver if he or she does not have a bank account.) Also, it considers the authorized payment agent to be someone authorized (designated) as such by the federal government, and not as a person or entity who meets certain requirements and who has been designated by the recipient as that recipient's authorized payment agent.

The Debt Collection Improvement Act of 1996 (DCIA) does not define authorized payment agent, and the legislative history does not address its meaning. The terms of the DCIA, however, shed light on its meaning.

The Act states that each federal payment to a recipient who becomes eligible for that type of payment after July 25, 1996, shall be made by EFT. It requires agencies to waive this requirement upon receipt of a written certification from the recipient "that the recipient does not have an account with a financial institution or an authorized payment agent." The Act further states that all federal payments made after January 1, 1999, shall be made by EFT; and authorizes the Secretary of the Treasury Department each time to waive this requirement as deemed necessary. The Act stipulates that recipients of payments required to be made by EFT must designate one or more financial institutions

or other authorized agents to which such payments will be made; and provide the information needed to effect EFT payments to the federal agency making or authorizing such payments.

Based on the above, for purposes of the EFT provisions of the Act, an authorized payment agent is a person or entity: (1) other than a financial institution, (2) with which the recipient has an account, and (3) in which account the recipient may deposit funds. Examples of entities that comply with this definition are many financial service firms and investment companies.

Consequently, suggest that section 208.2(b) be amended to read: “Authorized payment agent means a corporation, partnership or entity, other than a financial institution, (1) with which a recipient has an account in which the recipient may make deposit of funds by electronic funds transfer, and (2) which has been designated by the recipient to receive federal payments on behalf of the recipient.”

This proposed definition meets the requirements of the Act for an authorized payment agent and avoids the situation of making payments to an account in the name of a third party.

(c) The definition of “electronic funds transfer” should include a statement that covers emerging technology. The definition should state that the Treasury Department periodically will release a letter or bulletin of products that meet the requirements of this definition. This allows for new products to be introduced quickly and eliminates the need to rewrite this regulation to cover the emerging technology.

Also, since interagency payments are included in the definition of “Federal payment,” this definition should be expanded to include settlement at the Treasury Department, since the Treasury is not a financial institution as defined in the cited definition.

(d) The definition of “Federal payment” needs to be expanded to capture contractors. The Federal Acquisition Regulation cites contractors and vendors. Travel payments need to be explicitly identified since DoD Components have received many questions about whether travel reimbursements are covered. Intra-agency payments also should be listed.

(e) There is no definition that allows Treasury to act for the agencies for the purposes of intra/interagency transfers. The ability of the Treasury to act in this manner needs to be made clear. DoD also recommends that a sentence be added providing that federal agencies that make or authorize payments are not required to ascertain, when provided the EFT information by a recipient of federal payments, that the financial institution selected by the recipient meets the eligibility and insurance requirements of this definition. (This definition actually is more important for issues of waiver, and not for processing EFT information and making payment.)

(f) No comments.

(g) Recommend that the word "entitled" be substituted for the word "authorized." Proper recipients of federal payments (including persons receiving payments in the capacity of a fiduciary trustee for others) have a legally enforceable right to receive payment. This definition should parallel the definition of recipient in the regulations for Electronic Benefits Transfers.

The Department suggests that the definition for individual be clarified specifically to cover sole proprietorships.

208.3 Payment by electronic funds transfer.

No comments.

208.4 Waivers.

This section should be expanded to include waivers for contractors. The Department has worked with the Treasury Department on many of the financial institution issues, including the advice of payment issue. Businesses need to be aware up front that the waiver is available if financial institutions cannot meet the deadline of January 1, 1999.

This section also needs to clarify that it is the individual agencies that will maintain the waiver databases.

The Department also suggests that the Treasury Department may want to link the waivers to the inception of electronic transfer accounts (ETAs). If that is done, then most waivers would lapse when these accounts become available, given Treasury's strategic goal of bringing the unbanked into the mainstream.

(a) The first waiver is based on being "grandfathered," i.e., eligibility before July 26, 1996, and having an account. The individual can certify that payment by EFT would impose a hardship due to a physical disability or a geographic barrier. Based on the ease of banking electronically, the Department believes that the proposed waivers are far too liberal. Recommend that persons already on EFT be prohibited from using the waiver policy to stop EFT.

The Department has had a voluntary EFT policy in place for many years and began to aggressively market EFT in the early 1990s. In its annuitant system, for example, the Department has successfully marketed EFT even to the physically disabled.

The Department has voluntarily signed up 96 percent of its annuitants, including the physically disabled annuitants, and we now are advising the remaining 4 percent (mainly grandfathered annuitants) of the mandatory EFT requirements. Based on a review of DoD statistics, slightly over one percent of our newly eligible retirees and annuitants has certified that they are unbanked. Recommend that the waiver specifically exclude any person who currently is working for the government. The Department has many disabled individuals working for it who are on EFT for their salaries and travel reimbursements.

(b) This financial hardship category should be broadened to apply to businesses as well as individuals. Smaller businesses treat the EFT program as a detrimental transfer of routine business cost from the government to the vendor. Many financial institutions impose substantial charges on business entities (unlike individuals), regardless of transaction size, thus agencies are concerned about small transactions. We have seen banks impose the following charges:

- Account set up charges, ranging from \$25 to \$100, even for existing customers
- Per payment
- Per addendum record, with the charge based on record length
- Monthly account maintenance

These charges can be considered excessive for small businesses, generally receiving small payments or receiving only a few payments per year, that do not have leverage to negotiate favorable transaction fees from their bank.

The section-by-section analysis specifically states that the Treasury Department will obtain bids that contain defined geographic areas. This will ensure that all individuals have equal access to the accounts defined in section 208.5. It also states that the account will be provided at a reasonable cost to the individual. This would eliminate the need for a financial hardship waiver except for a limited period of time.

Since the Treasury Department has provided a time in the draft regulations for the Treasury provided accounts to be available, the financial hardship waiver should be tied to the availability of that account. The recipient should be given clear notification that the waiver is limited and that if they do not want to accept the Treasury account defined in section 208.5, that they can make alternate arrangements with a financial institution or authorized payment agent, if the latter definition is changed in accordance with our comments for subsection 208.2 (b), above.

(c) The Treasury Department needs to broaden and address the international EFT arena. The waiver section addresses situations where an agency cannot make payments by EFT in a foreign country but does not address agencies that do business in a country that penalizes that agency for being unable to use EFT to make payments in country. Specifically, we have shared information informally with the Treasury Department staff

that shows that Germany will assess a penalty against any agency or individual who introduces a check or other paper instrument into their banking system after July 1998.

(d-f) No comments.

(g) Nonrecurring payment--This is an excellent addition to the waiver concept as the cost to collect EFT data for a one time payment is not offset by operational savings.

(h) No comments.

208.5 Access to account provided by Treasury.

The definition should include a statement that the individual does not have an account with an authorized payment agent.

The proposed definition is clear in the context of individuals but needs to be expanded for businesses, i.e., would the concept of access outlined in this section apply to small businesses? Access to reasonably priced deposit services is equally applicable to the small business community as it is to individuals. For businesses, the timely processing of payment data at a reasonable price is important if the government is to be considered a reliable business partner.

The weak point in implementation for businesses is the addendum records. This is a problem today with low volumes and could grow dramatically with greatly increased volumes. Vendor payments require an addendum record, which contains the remittance advice. While we are able to generate the payment, how will the addendum be handled? Even at today's volumes there are many problems with both banks and vendors who are not EDI capable. This lack of capacity will lead to increased work load, as vendor inquiries on payment problems must be handled. Perhaps the Internet holds a viable solution.

208.6 Account requirements.

Given the proposed definition of an authorized payment agent in section 208.2 (b), the Department also recommends that section 208.6 "Account requirements" be amended to read: "Each federal payment made by electronic funds transfer shall be deposited into an account at a financial institution or authorized payment agent. The account at the financial institution or authorized payment agent shall be in the name of the recipient."

The account requirements should be expanded to cover addendum record processing for both individuals and for small businesses. The accounts should not be restricted only to individuals but should be open to small businesses as well. This will allow the Treasury Department to ensure that small businesses are charged fairly for

receiving their addendum records and EFT payments and can compete in an electronic payments arena.

208.7 Agency responsibilities.

(c) The definition under this section should be broadened to include the type of hardship waiver that the individual is applying for. This enables the agency to work with the individual to remove that obstacle.

The section should be broadened to include the signing up of vendors and contractors. This Department is using the Central Contractor Database to capture EFT data for its vendors and contractors.

208.8 Recipient responsibilities.

(a) and (b) Both of these sections need to include authorized payment agent accounts. These sections only reference financial institutions.

(c) See comments under section 208.7(c) above.

208.9 Compliance.

No comments.

208.10 Reservation of rights.

No comments.